

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-474

Decided October 7, 1982

Appeal from decisions of the Utah State Office, Bureau of Land Management, in part rejecting noncompetitive over-the-counter oil and gas lease offers and in part requiring acceptance of stipulations in noncompetitive oil and gas leases U-48917 and U-49251.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases:
Stipulations -- Secretary of the Interior

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

APPEARANCES: James M. Chudnow and John L. Messinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James M. Chudnow and John L. Messinger appeal from decisions dated December 30, 1981, and January 27, 1982, of the Utah State Office, Bureau of Land Management (BLM), in part rejecting noncompetitive over-the-counter oil and gas lease offers and in part requiring execution of stipulations as a condition to the issuance of oil and gas leases U-48917 and U-49251.

In its decisions concerning those leases, BLM stated that an oil and gas environmental analysis was prepared for lands within the area administered by the Vernal District Office, of which the subject areas are a part.

Excerpts from the Environmental Analysis Record (EAR) were included in the case records. Both decisions state, as regards the lands at issue:

This area, Blue Mountain, is a buffer zone around Dinosaur National Monument. It includes several canyons which drop from the top of Blue Mountain into larger canyons within the Dinosaur National Monument. These canyons include Daniels Canyon, Moonshine Draw, Iron's Spring Wash and Cub Creek. Vegetation within these areas is quite varied. Tree species include ponderosa pine, pinyon, juniper, mountain mahogany, douglas fir, and narrow leaf cottonwood. Shrub species include sagebrush, greasewood, serviceberry, and bitterbrush. Grass species include a variety of perennial and annual grasses. There is also a variety of wildlife species. The most important from a recreational aspect is the deer herd. This area produces high quality deer hunting during the fall. It is highly scenic and accounts for a large portion of the sightseeing visitor use within the Dinosaur National Monument.

The high quality scenery adjacent to portions of the Dinosaur National Monument would be diminished by oil and gas operations. These areas are visible from National Park Service overlooks or roadways. The overlooks provide highly scenic canyon vistas which are presently free of man's intrusions.

Accordingly, it has been determined that a lease should not be issued authorizing disturbance of the following described lands. A lease may be issued, however, upon acceptance of the enclosed stipulation.

For U-48917 BLM required execution of three separate requirements -- a no surface occupancy stipulation, and the following:

In order to protect nesting habitat, exploration, drilling, and other development activity on the S 1/2 SE 1/4, Sec. 20; E 1/2 E 1/2, S 1/2 SW 1/4, SW 1/4 SE 1/4, Sec. 21, T. 4 S., R. 25 E., SLM, Utah, will be allowed only during the period from April 30 to November 1. This limitation does not apply to maintenance and operation of producing wells. Exceptions to this limitation in any year may be specifically authorized in writing by the District Oil and Gas Supervisor, Geological Survey, with the concurrence of the District Manager, Bureau of Land Management.

No occupancy or other surface disturbance will be allowed within 1,000 feet of the sage grouse strutting grounds located in the S 1/2 SE 1/4 Sec. 20; E 1/2 E 1/2, S 1/2 SW 1/4, SW 1/4 SE 1/4 Sec. 21, T. 4 S., R. 25 E., SLM, Utah. This distance may be modified when specifically approved in writing by the District Oil and Gas Supervisor, with the concurrence of the District Manager, BLM.

For U-49251 BLM required execution of a no surface occupancy stipulation and the following:

In order to protect important nesting habitat, exploration, drilling and other development activity in the W 1/2 NE 1/4 Sec. 21; SW 1/4 Sec. 23, T. 4 S., R. 25 E., SLM, Utah, will be allowed only during the period from June 30 to April 1. This limitation does not apply to maintenance and operation of production wells. Exceptions to this limitation in any year may be specifically authorized in writing by the District Oil and Gas Supervisor, Geological Survey, with the concurrence of the District Manager, Bureau of Land Management.

No occupancy or other surface disturbance will be allowed within 1,000 feet of sage grouse strutting grounds located in the W 1/2 NE 1/4 Sec. 21; SW 1/4 Sec. 23, T. 4 S., R. 25 E., SLM, Utah. This distance may be modified when specifically approved in writing by the District Oil and Gas Supervisor, Geological Survey, with the concurrence of the District Manager, Bureau of Land Management.

In addition, BLM held for rejection certain parts of each offer stating that it was in the public interest to invoke the Secretary's discretionary authority to do so.

In the statement of reasons, appellants note the world energy situation and the need for safe and reliable domestic sources of energy. They assert that new technology permits proper and adequate environmental protection during oil and gas exploration. Appellants allege that canyons are not found on the areas covered by their offers and that stipulations which adequately protect wildlife and flora should not be a problem "formulation-wise." Appellants request less stringent stipulations and suggest a stipulation merely requiring prior approval of activity by the District Manager rather than rejection of acreage with "no mention of directional drilling being allowed." It is unclear whether appellants are objecting to all the stipulations imposed by BLM or whether they are concerned merely with the rejected acreage. In any event, we find that BLM properly rejected parts of each offer and properly imposed necessary stipulations.

[1] The Secretary of the Interior, through BLM, has the discretion to refuse to issue oil and gas leases even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965). If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons which reflect due regard for the public interest. Such stipulations will be upheld on appeal only if the record shows that BLM adequately considered the factors involved and if they reflect a reasonable means to accomplish a proper Departmental purpose. H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); A. A. McGregor, 18 IBLA 74 (1974). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981).

The EAR on which the State Office relied substantiates the conclusions reached by BLM. The EAR was quoted in the decision itself as it specifically relates to the Blue Mountain area which is a National Monument buffer zone. Recommended stipulations provided by the EAR for National Monument buffer zones are those providing for no surface occupancy and suspended leasing. No surface disturbance within 1,000 feet is the recommended stipulation for sage grouse strutting grounds and nesting areas (EAR at IV-87, 101, 102, 103). Further, the EAR specifically provides the months during which exploration, drilling, and other development activities are to be allowed and curtailed and those time periods are reflected in the stipulations (EAR at IV-100, 101). ^{1/}

BLM considered available information and formulated the stipulations. Appellant has not shown sufficient reason to change the result and BLM's final decision will be upheld. See Questa Petroleum Co., 33 IBLA 116 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

^{1/} We note that at IV-101 of the EAR the limitation on exploration, drilling, and other development activities to protect nesting habitat indicates such activities will be allowed only between June 30 and Apr. 1. This is the limitation imposed in U-49251. However, for U-48917 the limitation of activities states that in order to protect nesting habitat, activities will be allowed only between Apr. 30 and Nov. 1. This is an apparent discrepancy as the EAR at IV-100 states that limiting activity to the period Apr. 30 to Nov. 1 is "to minimize watershed damage."

